

CAUSE NO. DC-13-420

JUAN F. MARTINEZ	§	IN THE 229 TH
V.	§	
	§	JUDICIAL DISTRICT COURT
	§	
WHATABURGER FRANCHISE LLC	§	STARR COUNTY, TEXAS

PLAINTIFF JUAN F. MARTINEZ' FIRST AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

JUAN F. MARTINEZ ("*Plaintiff*"), files his 1st Amended Original Petition complaining of WHATABURGER FRANCHISE LLC ("*Defendant*"), and would respectfully show as follows:

I.
DISCOVERY LEVEL

1. Discovery under this petition should be conducted under Level 3 pursuant to Tex.R.Civ.P. 190.4.

II.
PARTIES

2. Plaintiff, JUAN F. MARTINEZ, is a natural person residing in Starr County, Texas.
3. Defendant, WHATABURGER FRANCHISE LLC, is a company authorized to and doing business in Texas and whom has answered this suit.

III.
VENUE/JURISDICTION

4. This Court has jurisdiction over defendant because it is a Texas resident and/or conducts business in Texas. Defendant's conduct was a producing and/or proximate cause of Plaintiff's damages.

[*Plaintiff Juan F. Martinez' First Amended Petition*].



5. Venue is proper in Starr County, Texas under §§ 15.002(a)(1) and (2) and 15.005, of the Tex. Civ. Prac. & Rem. Code because the acts or omissions giving rise to this claim occurred in Starr County, Texas, and because Defendant, WHATABURGER FRANCHISE LLC, has done business in, and continues to do business in Starr County, Texas.

IV. FACTUAL BACKGROUND

6. On or about March 15, 2013, Plaintiff, JUAN F. MARTINEZ, was an invitee of and at the WHATABURGER owned and operated by WHATABURGER FRANCHISE LLC located at Whataburger, 4143 East Highway 83, Rio Grande City, Starr County, Texas, 78582. Juan, while attempting to enter the building, was injured as a result of his contact with the door. Plaintiff brings this suit to recover damages for personal injuries proximately caused by Defendant, WHATABURGER.

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V.
CAUSES OF ACTION

7. Defendant WHATABURGER had a duty to use ordinary care in building, maintaining and repairing its premises.

8. Defendant WHATABURGER owed the Plaintiff an affirmative duty to operate and maintain the WHATABURGER in a safe manner and in compliance with all applicable laws, rules and regulations for the safety of its patrons. On the occasion in question, Defendant WHATABURGER breached its highest duty by operating in a negligent and reckless manner, thus proximately causing Plaintiff, JUAN F. MARTINEZ, to suffer serious injuries.

VI.
ACTUAL AND SPECIAL DAMAGES

9. As a direct and proximate result of the conduct complained of herein, Plaintiff, JUAN F. MARTINEZ, suffered catastrophic injuries, including bodily impairment, disfigurement, severe physical and mental pain, mental anguish and loss of earning capacity in the past and future. In all reasonable probability, Plaintiff will suffer for the balance of his natural life. Plaintiff seeks to recover past and future damages for each element of his damages.

10. Plaintiff has incurred various medical expenses in the diagnosis and medical care and treatment of his injuries. These medical expenses were incurred and will be incurred for the necessary care and treatment of the injuries resulting from the incident made the basis of this action. As a further result of the injuries sustained by Plaintiff, there is a reasonable probability that Plaintiff will incur future expenses for his medical care and attention. Plaintiff seeks recovery of past and future medical expenses, and life care expenses.

11. As a proximate result of the Defendant's acts and omissions complained of herein, Plaintiff's capacity to earn a livelihood was totally destroyed or severely impaired, and in all

[*Plaintiff Juan F. Martinez' First Amended Petition*]

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reasonable probability this incapacity will continue long into the future, if not for the balance of Plaintiff's natural life. Plaintiff seeks damages for past and future lost wages and lost earning capacity.

**VII.
PREJUDGMENT AND POSTJUDGMENT INTEREST**

12. Plaintiff hereby pleads for both prejudgment and post judgment interest as allowed by law.

**VIII.
CONDITIONS PRECEDENT/CAPACITIES**

13. All conditions precedent have been performed or have occurred. Plaintiff sues Defendant in all capacities in which he is entitled to recover.

WHEREFORE PREMISES CONSIDERED, Plaintiff JUAN F. MARTINEZ, prays that upon trial Plaintiff have and recover from Defendant the following:

- a. actual damages in excess of this Court's minimum jurisdictional limits;
- b. prejudgment interest at the highest legal rate allowed by law;
- c. post-judgment interest on said judgment until paid in full;
- d. court costs; and
- e. general relief, at law and in equity.

Respectfully submitted,

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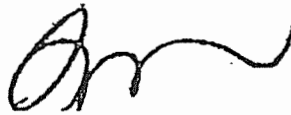
ATTORNEY FOR PLAINTIFF
JUAN F. MARTINEZ

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was sent to the following counsel pursuant to the Texas Rules of Civil Procedure on the 23rd day of July, 2013.

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